

1 MR. ARONOWITZ: All the way to "attached," we will
2 visit those, but I would say that those letters aren't --

3 JUDGE STEINBERG: Well, if the letter stay in, the
4 sentence stays in. If the letters don't stay in, then the
5 sentence means nothing. So let's worry about those when we
6 hit the letters.

7 MR. ARONOWITZ: I believe that's the extent of our
8 objections.

9 Oh, wait a minute. Hold it. No, no, no. The
10 letters -- sorry, I thought that was a separate exhibit.

11 The Maurice Hinchey --

12 JUDGE STEINBERG: Page 12.

13 MR. ARONOWITZ: Page 12, is that what it is? No,
14 page 11.

15 JUDGE STEINBERG: No, Mr. Riley changed.

16 MR. RILEY: My letter about fascinating plans and
17 pagination --

18 MR. ARONOWITZ: Okay, so this would be -- Hinchey
19 is 12, Manzi is 13, Leventoff is 14, Sullivan is 15, and
20 Scott is 16. We would object to those as unverified and not
21 relevant, the same objections we raised before.

22 MR. RILEY: Well, Your Honor, my response to it is
23 this, and I think it's somewhat different from the arguments
24 earlier. As Mr. Weis phrases it here, these are letters
25 that he offers as being -- reading his exhibit -- as being

1 very typical of the feelings which had been expressed to
2 him. That's different than saying I offer these for the
3 truth of what's stated.

4 We have here a question which as I understand it
5 Mr. Helmick and Mr. Aronowitz press, as to whether WJUX
6 broadcast programming serving its community. Now, Mr. Weis
7 is, in essence, the licensee. He's the owner of the
8 corporate licensee. Mr. Weis is stating that I broadcast
9 programming that I believe satisfies my requirements as an
10 FCC authorization holder to serve Sullivan County and
11 Monticello, and I'm showing you some of what I receive that
12 fortifies my beliefs.

13 It would be as if he had done an ascertainment
14 survey and come in here with statements from people who he
15 had asked questions of, have we been satisfying your needs,
16 and they gave their responses. It would not be a matter of
17 bringing down all of the people of whom he had done
18 ascertainment studies to verify that.

19 What's important to the Commission is what did the
20 licensee believe to be the case, and Mr. Weis is saying this
21 is what I believe, and the Commission generally doesn't go
22 beyond what a licensee believes to determine whether what's
23 been said to him by his listening audience is true. Rather,
24 what's important is what has he heard from his listening
25 audience.

1 JUDGE STEINBERG: Okay, I'm going to sustain the
2 objection as to pages 12 through 16 and strike them because
3 they are not sworn statements and they contain hearsay.

4 Also, each of the letters are addressed to me so,
5 you know, it's not the case where -- well, I'm not going to
6 go any further. I don't want to suggest anything. Okay, so
7 the objection is sustained and four pages 12 through 16 of
8 MMBI 1 are rejected, but the remainder of the exhibit is
9 received.

10 (The document referred to,
11 having been previously marked
12 for identification as
13 Monticello Mountaintop
14 Broadcasting, Inc. Exhibit No.
15 1, was received into evidence,
16 except for pages 12 - 16, and
17 part of page 8 text.)

18 MR. RILEY: So there is no change other than the
19 change you ruled on earlier at page --

20 JUDGE STEINBERG: Yes.

21 MR. RILEY: I just want to be sure of what's left
22 of the text. At page 8 --

23 JUDGE STEINBERG: Virtually everything is left of
24 the text.

25 MR. RILEY: Okay. At page 8 you deleted a portion

1 of the text in Mr. Weis's statement, and I think --

2 JUDGE STEINBERG: Correct.

3 MR. RILEY: -- that's the only deletion from text.

4 Okay.

5 JUDGE STEINBERG: Correct.

6 MR. NAFTALIN: The bottom of page 10, top of page
7 10 refers to the letters.

8 MR. RILEY: Well, it becomes meaningless --

9 MR. NAFTALIN: Yes.

10 MR. RILEY: -- as Judge Steinberg said earlier.

11 JUDGE STEINBERG: Yes. I mean, we can skip that
12 sentence when we write the findings.

13 MR. RILEY: Your Honor, are you ready to move on?
14 I had given the reporter earlier two copies of MMBI Exhibit
15 2, which is a five-page exhibit, "Declaration of Herman E.
16 Hurst, Jr." dated November 7, 1997. And I would like to
17 offer that exhibit.

18 JUDGE STEINBERG: The document described will be
19 marked for identification as MMBI Exhibit No. 2, and it's
20 five pages. I don't know if that was in there.

21 (The document referred to was
22 marked for identification as
23 Monticello Mountaintop
24 Broadcasting, inc. Exhibit No.
25 2.)

1 JUDGE STEINBERG: My understanding of this is
2 pages 2, 3, 4 and 5 of Bureau Exhibit 2 are pages from the
3 July 25, '95 statement.

4 MR. RILEY: That's precisely correct, Your Honor.

5 JUDGE STEINBERG: Mr. Aronowitz?

6 MR. ARONOWITZ: Such that Figure 2 was --

7 MR. RILEY: Figure 2?

8 MR. ARONOWITZ: The things depicted on Figure 2
9 and Figure 3 were as they existed in July?

10 JUDGE STEINBERG: 1995.

11 MR. RILEY: Yes, that's what Mr. Hurst's -- his
12 contemporaneous -- his current statement, the November 7,
13 '97 statement in its second full text paragraph says, "In
14 July '95, I prepared a statement....for MMBI. I have now
15 reviewed the portions of that statement, pages 3 and 4 and
16 Figures 2 and 3, which is attached hereto."

17 So those are all portions of -- the remaining four
18 pages are all portions of the July 1995 statement.

19 MR. ARONOWITZ: No objection, Your Honor.

20 JUDGE STEINBERG: Okay, Exhibit 2 is received.

21 //

22 //

23 //

24 //

25 //

1 (The document referred to,
2 having been previously marked
3 for identification as
4 Monticello Mountaintop
5 Broadcasting, Inc, was
6 received into evidence.)

7 JUDGE STEINBERG: Let me ask Mr. Riley, if Mr.
8 Hurst has original photographs, something better than
9 xeroxes, could you bring them along?

10 MR. RILEY: We do.

11 JUDGE STEINBERG: Okay.

12 MR. RILEY: And I will -- I could show them to
13 everybody, but I want to give them to the reporter so that
14 the best photos are in the record. I have them with me here
15 today.

16 JUDGE STEINBERG: Maybe you could just bring the
17 negatives?

18 MR. RILEY: Trusting to human -- I will ask Mr.
19 Hurst if he does. I have one set of good originals, which
20 are -- I will ask him if he has the negatives.

21 JUDGE STEINBERG: Because you can have the
22 scanned.

23 MR. RILEY: They are much better than what you see
24 there. You see them in color and in super detail. I will
25 do that.

1 JUDGE STEINBERG: Yes, if you could get copies for
2 all of us, I would appreciate it.

3 MR. RILEY: Moving to MMBI Exhibit 3, Your Honor.
4 It is a -- it is a 36-page exhibit, Your Honor, beginning
5 with Declaration of Carol Montana.

6 JUDGE STEINBERG: The document described -- the
7 remaining pages are issues, programs less --

8 MR. RILEY: That's correct.

9 JUDGE STEINBERG: From November - December '94
10 through September '97, and the document described will be
11 marked for identification as MMBI Exhibit No. 3, and the
12 first page is a declaration. The following pages are issues,
13 programs lists from November - December 1994 through
14 September '97.

15 (The document referred to was
16 marked for identification as
17 Monticello Mountaintop
18 Broadcasting, Inc. Exhibit No.
19 3.)

20 JUDGE STEINBERG: Mr. Aronowitz?

21 MR. ARONOWITZ: Your Honor, we have an objection,
22 and I guess the objection kind of brings into issue when the
23 spot light was on. Certainly from December of '94 to some
24 time in June '95, and this is only with respect to MMBI, it
25 seems that with the letter of inquiry, that is, Mass Media

1 Bureau Exhibit 10, is the letter of inquiry that went out
2 from the Commission to MMBI, and that letter is dated June
3 21st. And, of course, the response was like --

4 JUDGE STEINBERG: June 21, '95?

5 MR. ARONOWITZ: '95. So it seems that the
6 Commission first began to raise its questions with respect
7 to the programming broadcast on the station, and that is
8 clearly included within the letter of inquiry at that time.
9 So that I would almost rule to exclude -- I won't
10 "almost" -- I think I will move to exclude -- I guess I need
11 to figure out a date, July 27th. Well, they responded in
12 July 27th.

13 JUDGE STEINBERG: Well, the issues, programs lists
14 from July to September '95 begins at page 10.

15 MR. ARONOWITZ: Ten. So I would move to exclude
16 from there forward.

17 MR. RILEY: Well, Your Honor.

18 MR. ARONOWITZ: Backward. No, exclude forward;
19 include backwards.

20 JUDGE STEINBERG: Basically, from page 10 to the
21 end of the exhibit?

22 MR. ARONOWITZ: Insofar as -- yes, yes, Your
23 Honor, because I'm looking at these dates. Yes. And there
24 may be -- I may have overlooked one or two dates that go
25 beyond this time frame, but clearly it would appear that

1 from July '95 forward they were certainly on notice of
2 programming, so that the material after that would seem to
3 be excludable.

4 JUDGE STEINBERG: Mr. Riley?

5 MR. RILEY: I don't agree, Your Honor, that Mr.
6 Goldstein's inquiry letter caused anyone to be concerned
7 that Mr. Goldstein was claiming that the programming on WJUX
8 was in any way deficient. In fact, and that's part of the
9 burden of Mr. Weis's statement, that Mr. Stewart in April of
10 '96 didn't suggest there was a problem with the programming
11 of WJUX. I don't think Mr. Goldstein's letter of inquiry
12 asks Mr. Weis to detail his programming. And, in fact, in
13 his response to Mr. Goldstein's letter, I don't think he
14 does detail his programming.

15 It is in the course of this hearing really with
16 the Bureau's and Universal's interpretation of the HDO and
17 the issues in it that they seem to have made programming at
18 WJUX an issue. I think that WJUX is entitled to respond.

19 If WJUX is not entitled to respond in this
20 fashion, then it seems to me the Bureau and Universal cannot
21 argue, in fact, it seems to me evident they can't argue, and
22 with this I concede the objection, that since June of 1995
23 they have anything to quarrel about in WJUX's programming.
24 And having said that, I will concede his objection. I take
25 it that's the point he makes.

1 MR. ARONOWITZ: First of all, and as I'm talking
2 I'm thinking about the latter part, the Mass Media Bureau
3 Exhibit 10, which is the letter of inquiry directed to Mr.
4 Weis, or to MMBI, definitely goes into programming, as does
5 Mr. Weis's response. And I would direct your attention to
6 MMB Exhibit 10, page 5, which looks like page 163 -- 160.

7 JUDGE STEINBERG: Page 160?

8 MR. ARONOWITZ: 160.

9 JUDGE STEINBERG: Those all -- I think those
10 inquiries relate to alleged transfer of control.

11 MR. RILEY: I don't know. I would have to look at
12 Mr. Weis's response to that, Your Honor, to see how he
13 conceived of that. But Bureau counsel is right in the
14 broadest brush that question is there.

15 But again, as I say, I would concede his objection
16 so long as I understand it correctly, and in the context of
17 his objection I think the conclusion is almost inexorable
18 that the Bureau and Universal contend that since the end of
19 June '95 they have no quarrel with WJUX's programming.

20 MR. ARONOWITZ: Public affairs programming.

21 MR. RILEY: That I concede their programming.

22 MR. ARONOWITZ: Public affairs programming.

23 MR. RILEY: Programming period.

24 MR. ARONOWITZ: Programming period.

25 MR. RILEY: Well, public affairs is only one

1 component of programming.

2 MR. ARONOWITZ: Right, and you still have news and
3 weather and traffic reports, and that's not included within
4 this exhibit as proposed public affairs programming.

5 MR. RILEY: But what would you do, present -- Your
6 Honor, it seems to me that he wants to present his side of
7 the case and not allow MMBI to allow to present its side of
8 the case.

9 JUDGE STEINBERG: I will overrule the objection
10 and receive the entire exhibit. Exhibit 3 is received.

11 (The document referred to,
12 having been previously marked
13 for identification as
14 Monticello Mountaintop
15 Broadcasting, Inc. Exhibit No
16 3, was received into
17 evidence.)

18 JUDGE STEINBERG: My understanding of -- well, I
19 guess programming is -- my understanding of programming is
20 whatever programming problems that were brought up, or the
21 context in which programming was brought up was the context
22 of transfer of control; that Mr. Weis was delegating or had
23 delegated or had abandoned his role as the licensee of the
24 station by allowing Mr. Turro to program his station 24
25 hours a day, seven days a week; and that that constitutes an

1 abandonment of control on Mr. Weis's part and an assumption
2 of control on Mr. Turro's part, and we're going to have
3 testimony about how did what. I mean, that's the way I see
4 the HDO considering programming.

5 Not programming -- I mean, I don't think the
6 Bureau is alleging that -- well, maybe they are alleging
7 that the programming -- not the Bureau, the HDO, the hearing
8 designation order, I don't know that that's alleging that
9 the programming in Station WJUX doesn't serve the community
10 of license or the coverage area. But what I read out of the
11 HDO unless I misconstrued it or missed something or don't
12 remember something, which is all those are possibilities,
13 that the programming is more related to transfer control
14 than anything else.

15 MR. ARONOWITZ: Understood, Your Honor.

16 JUDGE STEINBERG: I mean, am I wrong?

17 MR. ARONOWITZ: No, I think I -- I believe you're
18 right. My concern is, and it may be that I didn't follow
19 Mr. Riley, certainly with respect to public affairs -- I
20 mean, certainly to any programming prior to the issuance of
21 the letter of inquiry. Any programming after the letter of
22 inquiry would appear to be -- would appear to be that for
23 which, you know, the spot light theoretically has already
24 been shown.

25 And if I understood Mr. Riley's concession, if our

1 programming concerns did not go beyond -- programming being
2 public affairs, news, weather, the whole schmeer -- beyond a
3 date of June or July that we had talked about representing
4 in these letters of inquiry, and if we conceded that we had
5 no objection to programming beyond that date, that he would
6 concede to the exclusion of the post-July '95 materials.
7 And I guess I conceded to that.

8 MR. RILEY: No, I thought I heard --

9 JUDGE STEINBERG: No, you --

10 MR. ARONOWITZ: But I don't think I did.

11 MR. RILEY: You did not, and I have withdrawn it.
12 You didn't. You said, you said fine for the public affairs,
13 but what about weather, news and so on.

14 JUDGE STEINBERG: Traffic.

15 Your Honor, he cannot have it both ways. I have
16 withdrawn the concession.

17 JUDGE STEINBERG: Okay. So let's go on to the
18 next exhibit.

19 MR. ARONOWITZ: All right, we can deal with this,
20 it's no problem.

21 JUDGE STEINBERG: But I suspect that the
22 programming is going to be used -- when I read the findings
23 and conclusions that in there is going to be a statement or
24 a conclusion that because the programming was so heavily
25 weighted towards Bergen County, New Jersey, that WJUX or

1 MMBI is not serving the community that it is licensed to
2 serve. Just as sure as I'm sitting here that's going to
3 come in here.

4 MR. ARONOWITZ: But we're --

5 JUDGE STEINBERG: Because it's in the Bureau's
6 exhibits in various places.

7 MR. ARONOWITZ: Right. Right.

8 JUDGE STEINBERG: And I didn't -- I left it in and
9 I'm not going to leave it out of the opponent's case.

10 MR. ARONOWITZ: I think this is just a matter for
11 us to argue, the significance of it. So that's fine.

12 JUDGE STEINBERG: Okay, No. 5.

13 Excuse me, No. 4.

14 MR. RILEY: Yes, Your Honor. MMBI Exhibit 4 is
15 composed of two documents. MMBI is eight pages. It's
16 MMBI's Request for Admissions of Fact by the Bureau and the
17 Bureau's Response to MMBI's Request for Admissions of Fact.

18 JUDGE STEINBERG: The document described will be
19 marked for identification as MMBI Exhibit 4.

20 (The document referred to was
21 marked for identification as
22 Monticello Mountaintop
23 Broadcasting, Inc. Exhibit No.
24 4.)

25 MR. ARONOWITZ: I have no objection, Your Honor.

1 JUDGE STEINBERG: And MMBI Exhibit 4 is received.
2 (The document referred to,
3 having been previously marked
4 for identification as
5 Monticello Mountaintop
6 Broadcasting, Inc Exhibit No.
7 4, was received into
8 evidence.)

9 MR. RILEY: MMBI Exhibit 5, Your Honor, is a 21-
10 page exhibit. It begins with the Declaration of Wesley R.
11 Weis in which he identifies four documents, and the
12 remaining 20 pages of the exhibit consists of those
13 documents.

14 JUDGE STEINBERG: The document described will be
15 marked for identification as MMBI Exhibit 5.
16 (The document referred to was
17 marked for identification as
18 Monticello Mountaintop
19 Broadcasting, Inc. Exhibit No.
20 5.)

21 MR. ARONOWITZ: Your Honor, I just have one
22 question, and this is really more for clarification. I
23 don't foresee that we will have objection. But on what
24 appears to be handwritten page 11, which is a guarantee?

25 MR. RILEY: Yes, sir.

1 MR. ARONOWITZ: Is that Weis's signature?

2 MR. RILEY: Oh, it is.

3 MR. ARONOWITZ: Okay, just wanted to be sure.

4 All right, no objection.

5 JUDGE STEINBERG: Okay, MMBI Exhibit 5 is
6 received.

7 (The document referred to,
8 having been previously marked
9 for identification as
10 Monticello Mountaintop
11 Broadcasting, Inc. Exhibit No.
12 5, was received into
13 evidence.)

14 MR. RILEY: Your Honor --

15 JUDGE STEINBERG: Pardon me. Did I say the right
16 number? Did I say 5?

17 THE COURT REPORTER: Five, yes.

18 JUDGE STEINBERG: Thank you. Sorry.

19 MR. RILEY: Your Honor, MMBI Exhibit 6, I would
20 like to offer. It is 22 pages, including as the first page
21 a correction sheet, and as the last page -- I'm sorry. The
22 correction sheet and affidavit are the first page, and the
23 remaining pages are pages selected from Mr. Blabey's, Eugene
24 Blabey's deposition.

25 When we exchanged exhibits, Your Honor, I made

1 reference to this in my offer letter, or exchange letter,
2 pardon me, pointing out that we were exchanging this in the
3 event the Bureau decided it would not produce Mr. Blabey,
4 but I take it the Bureau is still going ahead, intending to
5 produce Mr. Blabey. And in that case, Mr. Blabey will give
6 live testimony with the Bureau examining him, and my
7 conducting examination over the phone, and the Bureau's
8 examination. And in that event, I would not pursue the
9 offer of Exhibit 6, but I don't want to withdraw it.

10 If for whatever reason the Bureau changes position
11 between now and the day of the hearing, I would like to
12 offer this and they could then cross-examine Mr. Blabey as
13 my witness.

14 JUDGE STEINBERG: Why don't we just leave it --
15 skip it. So No. 6 is skipped, to be revised or not.

16 MR. RILEY: And MMBI 7, Your Honor, is a nine-page
17 exhibit, my favorite exhibit of the entire proceeding. It
18 is a nine-page exhibit, pages from a reference book entitled
19 "50 Fabulous Places to Retire in America," identifying one
20 of those 50 places throughout our state, and they only
21 portion of New York to be selected is Sullivan County, New
22 York. It's a recent publication, relatively; 1991
23 publication.

24 It has information about Sullivan County in it. I
25 realize it's not typical exhibit material. I did want to

1 offer it as an exhibit. Should Your Honor not accept it as
2 an exhibit, I simply want the parties to have it because we
3 may end up quoting from it in our conclusions from this and
4 other reference material about Sullivan County to support
5 the reasonableness of Mr. Weis's choice of programming.
6 Serves a retirement community nearby New York City, so the
7 weather reports and traffic conditions about the Greater
8 Metropolitan Area would be of great interest to people in
9 Sullivan County.

10 In any event, that is Exhibit 7.

11 JUDGE STEINBERG: The document described will be
12 marked for identification as MMBI Exhibit 7.

13 (The document referred to was
14 marked for identification as
15 Monticello Mountaintop
16 Broadcasting, Inc. Exhibit No.
17 7.)

18 JUDGE STEINBERG: Can't Mr. Weis just testify that
19 it's a retirement community and this is the type they --
20 they like Big Band music and stuff that WNEW used to do
21 before they tore everything out?

22 MR. RILEY: He does say that in -- Your Honor, Mr.
23 Weis says that in his statement at some point, and I guess I
24 wanted to world to know he's not alone in that view of the
25 audience he's playing to in Sullivan County.

1 But in any event, we have offered Exhibit 7.

2 MR. ARONOWITZ: I would object to it, Your Honor.

3 JUDGE STEINBERG: Okay, I sustain the objection,
4 and I'm looking at page 6 and there is a quote from J. H.
5 Monticello, and I'm just wondering how can we get J. H. up
6 here to testify.

7 MR. RILEY: I wish we could.

8 JUDGE STEINBERG: Okay, so Exhibit 7 --

9 MR. NAFTALIN: There is an exception, I believe,
10 to the hearsay rule that would admit this.

11 JUDGE STEINBERG: Common known facts and --

12 MR. NAFTALIN: Commercial publications, Your
13 Honor.

14 JUDGE STEINBERG: Commercial publications? Okay.

15 MR. NAFTALIN: Federal Rule of Evidence --

16 MR. ARONOWITZ: It's still not relevant.

17 MR. NAFTALIN: -- 803, subpart 17, I believe,
18 makes an exception to the hearsay rule. It's my favorite
19 part of MMBI's case.

20 JUDGE STEINBERG: 803 what?

21 MR. NAFTALIN: 803, subpart 17, a hearsay
22 exception for market reports and commercial publications.
23 It includes directories --

24 MR. ARONOWITZ: I don't think we should take
25 notice of this. I think we ought to go up to the town

1 ourselves.

2 JUDGE STEINBERG: I will take a look at it and see
3 what I can -- I mean, I don't really have -- this stuff you
4 can pull out of census data report that I would take
5 official notice of and stuff. But let me --

6 MR. ARONOWITZ: Your Honor.

7 JUDGE STEINBERG: If you want to revisit this
8 later, I'll take a look at this.

9 MR. NAFTALIN: I don't have a dog in this fight.
10 It struck me as --

11 JUDGE STEINBERG: No, it's interesting.

12 MR. NAFTALIN: Yes.

13 JUDGE STEINBERG: Especially the part on the
14 crime, I like that part.

15 MR. ARONOWITZ: Well, Your Honor, if I might, with
16 all due respect, it's not a mention in here about radio.

17 MR. RILEY: That's not the point of it, Your
18 Honor.

19 MR. ARONOWITZ: I know. But this is just a
20 stretch.

21 JUDGE STEINBERG: Well, maybe not. But for now
22 it's rejected.

23 //

24 //

25 //

1 (The document referred to,
2 having been previously marked
3 for identification as
4 Monticello Mountaintop
5 Broadcasting, Inc. Exhibit no.
6 7, was rejected.)

7 JUDGE STEINBERG: Okay, I guess that completes the
8 work that we have to do, and I presume that when Mr. Hurst
9 comes and testifies, that you will also ask him about MMBI
10 Exhibit 2, if you want to. Is that true? Did you want Mr.
11 Hurst or any other MMBI person to testify, I mean, other
12 than Mr. Weis?

13 MR. ARONOWITZ: Oh. Oh, yes. Well, Blabey and
14 Montana are in the mix already. Hurst is in the mix
15 already. Obviously, he's here to testify about both.

16 JUDGE STEINBERG: Okay.

17 MR. ARONOWITZ: He will be offered to testify
18 about both. They are putting him in their direct oral or
19 whatever this is called.

20 JUDGE STEINBERG: Well, up until Exhibit MMBI No.
21 2 he wasn't in the -- he wasn't in the mix for that, but now
22 he is. I mean, but you intend to -- because he's got to
23 know what to prepare, so I guess he's to prepare to support
24 MMBI 2 also?

25 MR. ARONOWITZ: Sure.

1 JUDGE STEINBERG: Okay. Anybody else?

2 MR. RILEY: I have --

3 JUDGE STEINBERG: I don't see anybody else.

4 MR. RILEY: Your Honor, I have a couple of things
5 not exhibit related, but I would like to raise before we
6 adjourn.

7 JUDGE STEINBERG: Okay.

8 MR. RILEY: One has to do with the deposition of
9 Mr. Loginow tomorrow. As this case has proceeded early on
10 there was a discussion at one of the depositions, my
11 recollection is there was the deposition of Ms. Montana,
12 about whether all parties could examine the deponent,
13 whether they had themselves given notice of depositions.

14 Well, of course, there weren't any notices of such
15 of depositions. The request for the deposition was that of
16 Mr. Turro's, which Monticello Mountaintop has supported at
17 each instance.

18 I think the Commission's order, which quotes
19 MMBI's pleadings, or at least at one points quotes a
20 pleading as being in support of it, anticipates that MMBI as
21 well as Turro may ask questions of Mr. Loginow. And I think
22 that may be Mr. Aronowitz's view of it. I just want to be
23 clear while we are in front of Your Honor that should the
24 matter arise tomorrow how Your Honor views it. The parties
25 to the case had proceeded with the case that everybody could

1 question a deponent, only if one had given notice of it.

2 Here we don't have a notice situation.

3 JUDGE STEINBERG: Well, I mean if --

4 MR. ARONOWITZ: We had to dispense with that to
5 accommodate -- I'm sorry.

6 JUDGE STEINBERG: Anybody have any objection to
7 all counsel --

8 MR. NAFTALIN: No objection.

9 MR. ARONOWITZ: We did our best -- I mean, in
10 light of the Commission's ruling, we did our best --

11 JUDGE STEINBERG: Right.

12 MR. ARONOWITZ: -- to expedite it.

13 JUDGE STEINBERG: Sure.

14 MR. ARONOWITZ: Cut the stuff, waived the
15 subpoenas and the notices.

16 JUDGE STEINBERG: So anybody can --

17 MR. ARONOWITZ: But we never suggested that --

18 MR. RILEY: No, no, you never have. No, no, I
19 just wanted to be clear.

20 JUDGE STEINBERG: Oh, it's been suggested in other
21 cases --

22 MR. RILEY: Yes.

23 JUDGE STEINBERG: -- that only the party noticing
24 the individual has a right to cross.

25 MR. RILEY: Right.

1 JUDGE STEINBERG: It's my dime, and I'm not going
2 to pay for your pages.

3 MR. RILEY: Yes.

4 MR. ARONOWITZ: Well, that's -- I think if Mr.
5 Naftalin --

6 MR. NAFTALIN: Yes, we don't object.

7 MR. RILEY: And then comes to mind actually two
8 remaining questions.

9 One is, well, do you know whether Mr. Warshaw's
10 deposition has been signed?

11 MR. HELMICK: He has given me -- in fact, I just
12 got this today -- a list of corrections. I haven't had a
13 chance to look at it but he has signed it. There are some
14 corrections. What I think I will do is just get it over to
15 you the way it is. He's marked the corrections,
16 unfortunately, I believe, on the pages rather than listed
17 them seriatim.

18 MR. RILEY: And the last thing, this does go back
19 to the exhibits, Your Honor, and I had noted that I wanted
20 to ask this question earlier. Because of the order of this
21 case with the Bureau as to MMBI having not only the burden
22 of going forward but the burden of proof, it may be that at
23 the conclusion of the Bureau's case MMBI would reconsider
24 what it has offered. It's reconsideration could run as our
25 exchange letter indicated to stuff we don't now anticipate

1 but may need to offer as rebuttal because the Bureau is
2 taking four witnesses for oral testimony, not written
3 direct.

4 I don't anticipate any surprises from any of those
5 four, but my anticipation has been confounded in other
6 matters before.

7 That's something I would take up with you at that
8 time. But there is the other side of the equation that I
9 ought to take up now. That MMBI may withdraw some of its
10 exhibits --

11 JUDGE STEINBERG: Fine.

12 MR. RILEY: -- as the Bureau case unfolds.

13 JUDGE STEINBERG: That's fine.

14 MR. RILEY: But because they aren't -- because we
15 are doing an admissions session before the witness really
16 would have delivered oral direct testimony, I would like
17 MMBI exhibits not to be usable by the Bureau in their cross-
18 examination of witnesses.

19 JUDGE STEINBERG: That's not workable.

20 MR. RILEY: Okay.

21 JUDGE STEINBERG: I don't think that's workable.
22 If there is something that's in the record a couple of time,
23 then if it's an MMBI exhibit and a Bureau or Turro exhibit,
24 then you use the Bureau or the Turro exhibit, or we can
25 refer to it.